

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division

CONSUMER FINANCIAL PROTECTION
BUREAU, et al.,

Plaintiffs,

v.

NEXUS SERVICES, INC., et al.,

Defendants.

Case No.: 5:21-cv-00016-EKD-JCH

**SECOND SUPPLEMENTAL DECLARATION OF JAMES E. SCOTT IN SUPPORT OF
PLAINTIFFS' REPLY TO MOTION FOR AN ORDER TO SHOW CAUSE WHY
DEFENDANTS SHOULD NOT BE HELD IN CIVIL CONTEMPT, SANCTIONS,
AND CERTIFICATION UNDER 28 U.S.C. § 636(e)(6)(B)(iii)**

I, James E. Scott, hereby declare as follows:

1. I am counsel of record for the Commonwealth of Virginia, *ex rel.* Jason S. Miyares, Attorney General, one of the Plaintiffs in this action. I am competent to make this declaration. The facts set forth in this declaration are based on my personal knowledge or information made known to me during the course of my official duties.

2. I submit this declaration pursuant to the Court's September 6, 2022 Order (ECF No. 159) on behalf of all Plaintiffs to this action in support of Plaintiffs' Motion for an Order to Show Cause Why Defendants Should Not be Held in Civil Contempt, Sanctions, and Certification Under 28 U.S.C. § 636(e)(6)(B)(iii) (ECF No. 139).

3. This declaration supplements and incorporates my two previous declarations in support of Plaintiffs' motion (ECF Nos. 141 and 157).

4. Defendants have failed to produce most of the documents and information required by the June 8, 2022 Discovery Order (ECF No. 129) ("Discovery Order"), including:

- a. Complete, unredacted electronic versions of all database files (see Discovery Order ¶ 5);
 - b. Documents sufficient to identify the financial condition of the Individual Defendants (see Discovery Order ¶ 9); and
 - c. Complete copies of all deposition transcripts within their possession, custody, or control, including depositions taken in the course of *RLI Ins. Co. v. Nexus Services, Inc.*, No. Case 5:18-cv-00066-MFU-JCH (W.D. Va.) (see Discovery Order ¶ 7).
5. Additionally, Defendants have not proceeded with ESI discovery on a schedule that will “allow the parties enough time to finish discovery on the current case schedule” (Discovery Order ¶ 3). Defendants have not provided any ESI discovery or given Plaintiffs any indication of when (or if) they will begin to produce ESI.
6. In their written opposition to Plaintiffs’ Motion (ECF No. 153), and at the status conference held on September 2, 2022, Defendants represented that they would produce certain outstanding documents on a specific schedule in order to demonstrate their “good faith efforts to comply with the Discovery Order.”
7. Defendants failed to produce these documents. Since September 2, Defendants have not produced any Lightspeed, Netsuite, Quickbooks, American Spirit, or Five-9 records; nor have they produced any financial records from the Individual Defendants.
8. Instead, on September 7, 2022, Defendants produced files containing bank records from the Entity Defendants and three related entities – Gamer Oasis, LLC; Nexus Programs, Inc.; and Homes by Nexus, Inc.

9. On September 23, 2022, Defendants produced an external hard drive that Defendants represented contains Capsule files. Plaintiffs were unable to review this production before filing this declaration.

10. At the Court's direction, Plaintiffs will file an additional declaration addressing the September 23 production once they have had an opportunity to review the hard drive.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 26, 2022

/s/ James E. Scott
James E. Scott
Attorney for Plaintiff
Commonwealth of Virginia, *ex rel.*
Jason S. Miyares, Attorney General